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Docket file 70-687

OCT 07 1987

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70-687

MEMORANDUM FOR: E. William Brach, Acting Chief
Licensing Branch

THROUGH: Philip Ting, Section Leader
MC&A and Physical Security Section
Licensing Branch, NMSS

FROM: Don Joy, Senior Safeguards Physical Scientist
MC&A and Physical Security Section

SUBJECT: GRANTING CINTICHEM EXEMPTION FROM MC&A REFORM RULE

The MC&A Reform Rule (i.e., 10 CFR 74.51, 74.53, 74.55, 75.57 and 74.59) was specifically intended to apply to four current Category I licensees (see page 10034 of Federal Register notice/Vol. 52, No. 60/March 30, 1987) which did not include Cintichem, Inc. 10 CFR 74.51(a) specifically exempts irradiated fuel reprocessing plants from the rule. The basis for exempting spent fuel reprocessing plants is the self-protecting nature of the material possessed (i.e., greater than 100 rem radiation levels of a distance of 3 ft. without intervening shielding). Most of the high enriched material possessed by Cintichem is self-protecting and that which is unirradiated or irradiated to less than 100 rem, is always less than a formula quantity (and almost always less than one kilogram U-235). However, Cintichem's operations do not fall within the literal definition of "fuel reprocessing," and thus are not legally exempted from the Reform Rule.

Aside from the legal considerations, it would be logical (and it was always the staff's intent) to apply the MC&A Reform Rule only to those licensees subject to Category I security requirements. Cintichem is a Category II licensee (in terms of security requirements), and thus should logically be subject to Category II MC&A requirements, as currently contained in Part 70 and which the licensee is currently following.

In the rulemaking process associated with the Category I MC&A Reform Rule, it was the staff's original intent to also develop a Category II MC&A rule which would apply to such licensees as Cintichem and Atomics International. The EDO, however, instructed the staff to hold off on developing a Category II MC&A rule because there were very few such licensees and the total quantity of SNM possessed by all such licensees was relatively small. That is, the EDO did not regard the need of a Cafegory II MC&A rule as being urgent. It was thus clearly intended that such licensees as AI and Cintichem continue to fall under the Part 70 MC&A requirements until such time as a Category II MC&A rule

OCT 07 1987

was promulgated. Unfortunately, the final wording of 10 CFR 74.51 and the revised wording of 70.51(e), 70.57(b) and 70.58(a), made at the time 74.51 was published, did not make it clear as to whether Category II licensees were to continue under Part 70 MC&A requirements or switch over to Part 74.

To add to the confusion, the statements of consideration associated with the Category I MC&A Reform Rule discussed possible exemption from 74.53 (but not the entire rule) for those licensees processing self-protecting material (i.e., greater than 100 rem at 3 ft.). However, these statements of consideration were being aimed at possible future licensees that would be subject to Category I security requirements. When reading the background statement of the March 30, 1987 Federal Register Notice, it is clearly evident that Cintichem was not intended to be covered by any portion of the Category I MC&A Rule.

Thus, I recommend that we respond to Cintichem's exemption request by (1) giving them an exemption from 74.51(a) and (b), which in turn exempts them from the entire MC&A Reform Rule, and (2) reinstate the appropriate requirements contained in 70.51, 70.57, and 50.58.

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